



Re: Response of The Summit Avenue Residential Preservation Association (SARPA) to Sullivan Property Investment LLC Appeal of HPC decision regarding 540 Portland Avenue

To the Saint Paul City Council:

Please accept this submission on behalf of The Summit Avenue Residential Preservation Association (SARPA) in support of the December 14, 2020 decision of the Heritage Preservation Commission to deny the application of Sullivan Property Investments II, LLC (the “Developer”) for approval of a three-unit townhouse development as a second principal structure and in opposition to the appeal of that decision by the Developer.

Position Statement of SARPA

The Summit Avenue Residential Preservation Association (SARPA) is dedicated to the preservation of the historic, residential, and urban park character of Saint Paul’s historic Summit Avenue. At its January 4, 2021 meeting the SARPA board of directors approved the above-mentioned support of the HPC denial and opposition to appeal thereof.

Background

This appeal relates to the application of the Developer to build a large three-unit townhouse directly behind another large three-unit building already on a Portland Avenue lot.¹ The proposed building is not on Summit Avenue but, as currently proposed, will present a false façade to Summit. This false façade will itself be very large apparently in an

¹ To say that this project, if it were to be built as proposed, is large is perhaps an understatement: some 7 variances would be required. The proposed new building would be given the address of 540 Portland. The existing building would remain 542 Portland.



attempt to mimic the size of the homes on Summit.² The false façade will be set back so far off Summit Avenue that its large size will be wholly out of place. It will be sited where a Summit Avenue carriage house would be sited. Thus, not only will the proposed triplex be too large for the site it is proposed to occupy but it and its false façade will be too large to be compatible with Summit Avenue. To use the language of the historic guidelines the proposed structure's size, scale, massing, and height are all too large given the size of its site and its distance from Summit.³ On December 14, 2020, at the direction of the St Paul City Council, the Historic Preservation Commission (HPC) held a hearing on the Developer's proposal and denied his application.

The December 14th HPC hearing

At the December 14th hearing many people testified against the proposed triplex. Some but not all were immediate neighbors, a number were architects with deep experience in historic preservation and the HPC guidelines and requirements. SARPA (whose purview is the entirety of Summit Avenue and whose mission is the preservation of its historic, residential, and urban park character) testified against it as did members of the Ramsey Hill Association (an organization whose purview is the entire Ramsey Hill neighborhood both on and off Summit). In short, those opposing this project were not a small cabal but a diverse group of interested citizens.

From a technological perspective the hearing did not go completely smoothly. Many people who were on the call and wished to testify were at first unable to do so because their lines were muted. This led to the erroneous belief that all interested persons had spoken resulting in a premature vote by the HPC. When the problem with the muted

² The proposed triplex will not have a Summit Avenue address because the site is not on Summit. This false façade is simply a pretense.

³ The site may be suitable for a carriage house size structure but that is not what the Developer has proposed.



telephone lines was corrected and all testimony heard the commissioners denied the application. In so doing they stated—as acknowledged at page 1 of the Developer’s appeal—that the: “Intent of denial is not to deny the project, but to get the developer and neighborhood together and hopefully find a mutually acceptable project.” (emphasis added).

Post December 14th Hearing Events

Those who objected to the project including SARPA and the members of the Ramsey Hill Association and others took the foregoing HPC directive seriously. In an email from the President of the Ramsey Hill Association, SARPA and RHA contacted the Developer seeking to have a meeting to include interested neighbors to move the process forward as required by the HPC. The Developer rebuffed this overture and instead of getting together with the neighborhood to find a mutually acceptable project filed this appeal.

The Appeal of the HPC Decision

The exact basis of the Developer’s appeal is somewhat obscure but it seems to have two parts.

The First Basis for Appeal

As his first basis for appeal, the Developer seems to argue that the City Council must assume that the project is in “full compliance with HPC guidelines” (Appeal at Page 2). This allegation may be bold but it is also incorrect. It ignores the incontrovertible fact that the HPC denied the application on December 14th. And it had good reason to do so. The deficiencies of the proposed project were exposed in the written submissions and the testimony of every one of the many witnesses at the December 14th hearing. As discussed briefly above, SARPA itself testified explaining the failure of the project to meet the size, scale, massing, and height requirements of the HPC guidelines.

The Developer's appeal ignores the HPC's December 14th decision and all of the objections and evidence presented in that hearing. Instead, he asserts that an HPC "approval" in an earlier hearing must govern. That assertion is completely misplaced. The earlier hearing he relies upon was riddled with technical, procedural and other legal deficiencies.⁴ The result was an unfair hearing: those in opposition to the project were not fairly heard. The hearing was simply unfair to the many who objected to this project. On appeal the City Council recognized those deficiencies and this unfairness and remanded the matter for a new hearing before the HPC. That new hearing was the December 14th hearing.

The Developer's appeal pretends that this unfairness did not happen, that the City Council's remand for a new hearing did not happen and that the December 14th hearing did not happen. However, all of those things did happen. The earlier unfair hearing is not controlling and cannot be relied upon to support this appeal. If further support for disregarding the earlier unfair hearing is needed it can be found in the fact that on December 14th when those in opposition to the project were able to present all of the facts to the HPC and the HPC in turn had the benefit of all of that new information it denied the application. The Developer's attempt to rely on an unfair hearing and his refusal to do what the HPC has directed him to do ought not be rewarded. The Developer must honor the HPC's December 14th directive and meet with the neighborhood. Given his refusal to do so his appeal must be denied.

The Second Basis for Appeal

As his second basis for appeal, the Developer seems to argue along the following lines: *Even though the HPC has specifically directed me to get together with the neighborhood I do not want to do it. I have had*

⁴ These deficiencies were set out in detail when the HPC decision in that earlier hearing was appealed.



*meetings with those people already.*⁵ This argument is not only arrogant it is not sensible. For one thing, the directive of the HPC was clear and direct. It was not precatory. For another the meetings the Developer relies upon were certainly tardy and essentially perfunctory. Moreover, when the HPC issued its directive it was fully aware of the meetings between the Developer and the public that had occurred before the December 14th hearing. Notwithstanding those earlier meetings and with them in mind, the HPC directed the Developer and the neighborhood to get together after the hearing. That is what SARPA and the RHA and the neighbors have been trying to do and what the Developer has refused to do.

The decision of the HPC to deny the application was reasonable. This a project is very problematic in many ways. It has drawn extensive well-grounded criticism from nearby neighbors, Ramsey Hill and Summit Avenue residents more broadly and architects and preservation experts, all of whom believe it does not meet HPC guidelines. If any iteration of this project is to be legally proper and acceptable the Developer must be truly collaborative; he must not simply go through the motions or worse yet seek to avoid doing even that. The Developer must meet in good faith with the neighborhood. The HPC recognized all of this and its denial of the application should be upheld. This appeal should be denied.

⁵ SARPA is particularly troubled by the fact that the Developer apparently discussed this project for months with the City without bothering to contact the immediate neighbors, the neighborhood or the Ramsey Hill Association. Certainly, he did not contact SARPA. If he had disclosed his plans earlier the above interested parties would have explained the myriad flaws in those plans and adjustments could have been made. It is possible that, in order to gain unduly large economic return, the Developer was so intent on building a triplex that is too large for the site and incompatible with HPC guidelines that he did not want neighborhood input until the project was essentially a fait accompli. Such behavior is wrong. Whether technically required or not this Developer and others in the future should be urged by the City to reach out early and not try to steal a march at the last minute.



Conclusion

For all of the above reasons the denial of the Developer's application should be honored and this appeal should be denied. SARPA, the RHA and the neighborhood all remain ready to meet with the Developer as directed by the HPC and as previously offered.

Respectfully submitted

Summit Avenue Residential Preservation Association

By its Interim President /s/ Wendy Caucutt

and its Board Members /ss/ Katherine Cairns; Thomas Darling (445 Summit Avenue); Francis Luikart; J. Gray Quale; Harry Walsh; and Carolyn Will